

(1975) 08 MAD CK 0015

In the Madras High Court

Case No : L.P.A. No. 23 of 1972, D/- 11-8-1975, against judgment of Raghavan J. in S.A. No. 786 of 1969, D/- 25-11-1971

Mahalakshmi Ammal

APPELLANT

Vs

G. Vijayasubramaniam and Others

RESPONDENT

Date of Decision : 11-08-1975

Acts Referred:

Citation : AIR 1977 Mad 87 : (1976) 89 LW 227 : (1976) 2 MLJ 284

Hon'ble Judges : Veeraswami, C.J.;Natarajan, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—Differing from the concurrent findings of the first two Courts, Raghavan J., on a construction of the last Will and

Testament of one Rukmani Ammal dated 9-12-1934, held that the interest which Sundaram Ammal was given thereunder, was but a life interest,

the remainder in B and E schedule properties being vested in the testatrix's great grand children by Sundaram Ammal. The testatrix died in 1935.

She had two daughters. Muthumeenakshi Ammal, who died in 1961, and Sithalakshmi Ammal, who died in 1963. The first had two daughters,

Sundaram Ammal, who died on 2-6-1965, and Subbunarasam Ammal. Sithalakshmi Ammal had no issues. By the Will, the testatrix gave the A

schedule property to the eldest daughter Muthumeenakshi Ammal and her second daughter Subbunarasam Ammal each for life without powers of

alienation. After their lifetime the direction in the Will was the Subbunarasam Ammal's heirs should get the A schedule property absolutely. B and

E schedule properties were then next disposed of by the testatrix. She said that these properties might devolve on Sithalakshmi Ammal, her second

daughter, and she should enjoy the property without any powers of alienation.

After her lifetime. Muthumeenaskhi Ammal's eldest daughter

Sundaram Ammal should get the properties. As to this disposition the language employed by the testatrix is

EN MUTHA KUMARATI MUTTHU MANOKARI AMMALUDAIYA MUDHALAVADU
KUMARTI SUNDARAMABAL SARVA

SUDANDHIRA PAATHIYAMAI ANUBAVITTHU VANDU.

The will proceeded to say that after the lifetime of Sundaram Ammal, her heirs should get the properties in the two schedules absolutely with

powers of alienation.

2. The first two Courts construed the disposition of the B and E schedule properties in favour of Sundaram Ammal as absolute so that they

considered that the subsequent disposition in favour of three children being in conflict with the earlier disposition, the latter should give way to the

former. In other words, the disposition in favour of the heirs of Sundaram Ammal was considered by the first two Courts as being repugnant to the

earlier disposition. Raghavan, J., in second appeal on a reading of the entirety of the Will and the pattern of the testatrix's intention as appearing in

paragraphs 5 and 6 as well as 8 of the Will, considered that the words ""SARVA SUDANDHIRA PAATHIYAMAI"" occurring in the disposition

in favour of Sundaram Ammal did not really express what it meant. We are inclined to accept this construction of the will.

3. The pattern of the testatrix's intention appears to be to benefit eventually the great grand children either through Sundaram Ammal or her sister

Subbunarasam Ammal. In the case of Subbunarasam Ammal, the testatrix has used a clear language that she should get only a life interest and after

her life, the remainder should vest absolutely in her heirs. When it comes to the great grand children by Sundaram Ammal, we do not see why a

different construction should be placed, her intention being plain, as we said, to benefit ultimately her great grand children. A great deal of stress

has been laid on the expression ""SARVA SUDANDHIRA PAATHIYAMAI"" while the testatrix gave an interest in the B and E schedule

properties to Sundaram Ammal and it is contended that this meant that absolute was given to her and that the subsequent disposition should be

held to be invalid, it being in conflict with the earlier one. But this contention does not satisfy the rule that in determining the intention of the testatrix

we have to look into the entire will and all the clauses in the will, will have to be read together. It is only by that means the intention of the testatrix

can be gathered satisfactorily. Apart from the pattern of the testatrix's intention we have one other fact that she has directed not merely the life

estate holders but also the ultimate beneficiaries, namely, the great grand children, to clear her debts, if any, remaining undischarged. This can only

show the intention of the testatrix that she meant the great grand children as the ultimate destination of her properties. On that view, we concur with

Raghavan J. that the expression "'SARVA SUDANDHIRA PAATHIYAMAI'" occurring in the disposition in favour of Sundaram Ammal would

not by itself be determinative of the quantum of the estate granted by the testatrix to her. The appeal is, therefore, dismissed. No costs.

4. Appeal dismissed.